

Department of Environmental Protection and Resource Management
105 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Civil Citation No. SC90-0321-C001

Stefania Malkowski

401 Armstrong Road

Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Baltimore County Code Enforcement Hearing Officer on January 5, 2010 for a Hearing on a citation for violations under the Baltimore County Code (BCC) 103 Article 33 Title 5, failure to comply with correction notice issued October 29, 2009, for placing fill dirt behind garage blocking the natural flow of water causing flooding on adjacent properties on residential property known as 401 Armstrong Road, 21220.

On December 10, 2009, pursuant to Baltimore County Code §3-6-205, Inspector Jim Brendel issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$8,400.00 (eight thousand four hundred dollars).

The following persons appeared for the Hearing and testified: Stefania Malkowski, Respondent, Lewis Clark and Douglas Stevens, Complainants and Jim Brendel, Inspection and Enforcement Officer for the Department of Environmental Protection and Resource Management (DEPRM), and Michael Moorefield, DEPRM.

After proper consideration of all the evidence and testimony presented, the Hearing Officer finds:

A. A Correction Notice was issued on October 29, 2009 for re-grading of fill dirt to allow ponding water to drain across Respondent's property to the ditch below property, stabilize disturbed area with seed and straw, and remove crushed stone as ordered by DEPRM letter dated August 12, 2009. This Citation was issued on December 10, 2009.

B. DEPRM Inspector Jim Brendel testified that DEPRM inspected this property after receiving a complaint about the natural flow of water run-off being blocked. Inspection on October 29, 2009 found water ponding and flooding both 403 Armstrong Road and the adjacent property at 3415 Park Road. Inspector Brendel testified that the natural flow of water to a drainage ditch was blocked by dirt Respondent Malkowski had brought in to grade her property. He further testified that Respondent had dumped stone along the side and in front of her garage, blocking the runoff. Re-inspections on November 17, 2009 and December 3, 2009 found no correction. He testified that a grading permit had previously been issued to Respondent but that it was rescinded because she did not comply with the terms of the permit. Respondent's property is at the bottom of the street and water drains toward her property. Until she brought in dirt and stone and changed the grade, the water flowed across her property into a drainage ditch. Photographs in the file show significant areas of standing water in the grass along the side property lines.

C. Neighbors Lewis Clark (403 Armstrong) and Douglas Stevens (3415 Park) testified that Respondent's re-grading has flooded their properties. Mr. Clark testified that he has lived in his house for 35 years and that he never had a water problem until Respondent trucked in dirt and asphalt and junk to her property. He further testified that he has some firewood along the property line but that it is up on blocks and is not blocking water flow. He testified that the mound of dirt from in front of the properties needs to be removed, and agreed that it might be possible to install a swale to conduct water for natural drainage, and that such a swale could be partially on his property.

D. Mr. Stevens testified that he has lived in his house since 1986. The woodpile has always been in the same location. There has never been flooding before, until Respondent brought in new dirt. He has pine trees that are flooded and are collapsing.

E. Respondent Stefania Malkowski testified that she only brought in a little dirt to protect her property from flooding. She testified that otherwise she cannot have a garden and cannot keep the water out of her garage. She further testified that she cannot afford to hire an engineer and that she got the fill dirt for free.

F. Michael Moorefield, DEPRM, testified that DEPRM has tried to work with Respondent to find a solution to her flooding problems. He testified that Respondent should have to restore the property to its prior condition or should have to hire a professional engineer to survey the property and prepare a plan to re-grade her property. He further testified that a professionally prepared survey and plan will be required to obtain a grading permit.

G. Review of the file shows that when Respondent began this project, she did obtain required permits. Building Permit #B668474, issued September 15, 2008, provided for "rip rap existing bulkhead on Armstrong Creek." Building Permit #B712761, issued May 13, 2009, provided for "Grade 13,000 SF disturbed area for grading of lot. Waterfront property." However, a Stop Work Order was issued by DEPRM on July 21, 2009 after inspection found improper dumping of rubble and construction debris on the property, and DEPRM sent Respondent a letter on July 23, 2009 notifying her that both building permits were suspended and that all work on the property must stop.

H. Review of the file shows that DEPRM met with Respondent and provided written instructions for correction prior to issuing the Correction Notice and this Citation. A letter August 12, 2009 advised Respondent that a pile of used masonry block and a pile of crushed stone/dirt and a pile of dirt all had to be removed from where they had been deposited; the used masonry block (rubble) had to be removed from the property, and the crushed stone/dirt and the pile of dirt must be moved to the rear of her lot. A second letter from DEPRM dated August 25, 2009 stated that the rubble had been removed as required; the letter further stated that two piles of crushed stone/dirt had been improperly relocated behind Respondent's trash receptacle area in violation of County law, and that this "material must be moved to allow surface water to pass from the adjoining property onto your property. This correction must be completed no later [than] September 15, 2009."

I. The evidence and testimony presented clearly shows that Respondent has failed to comply with County law and has failed to comply with the County's correction notices. Respondent has improperly brought crushed stone and dirt, rubble, and construction debris onto her waterfront area property without valid permits, and by changing the grade of her property has caused flooding of two neighboring residential properties. Baltimore County Code provides "A person may not change the natural ground level of any lot or parcel in any way which results or may result in any changing of the direction, volume, distribution, or velocity of the flow of surface water on or over any adjoining private or public property without a valid grading permit." BCC 33-5-103.

J. Baltimore County Code Title 33, Article 5 contains extensive requirements and procedures for fill and grading, and also requires compliance with Chesapeake Bay Critical Area law and regulations, to prevent this kind of property damage and environmental hazard. Respondent must either remove the improperly placed material and restore the original grade and drainage, or correct the violations pursuant to valid permits that can only be issued if Respondent submits a sealed plan and survey from a professional engineer. If Respondent fails to correct the violations within the time provided below, the County will be authorized to enter the property to remove the improperly placed material, at Respondent's expense.

K. This Order is designed to give Respondent a significant financial incentive to correct these violations quickly and provide relief to the two neighbors whose properties are being flooded by improperly diverted water. If Respondent complies with this Order within the timeline provided below, the total civil penalty assessed for these significant code violations will be only \$400.00 (four hundred dollars).

IT IS ORDERED by the Code Enforcement Hearing Officer that a civil penalty be imposed in the amount of \$8,400.00 (eight thousand, four hundred dollars).

IT IS FURTHER ORDERED that the civil penalty will be REDUCED by \$5,000.00 (five thousand dollars) if Respondent takes action by February 12, 2010 that abates the flooding of neighboring residential properties, such as by removing improperly placed material or creating a temporary relief ditch; PROVIDED ALSO, any such action must be approved in advance by DEPRM to ensure environmental protection and regulatory compliance.

IT IS FURTHER ORDERED that after February 12, 2010, the County may enter the property for the purpose of correcting violations and/or abating flooding, at Respondent's expense.

IT IS FURTHER ORDERED that the civil penalty will be REDUCED by \$3,000.00 (three thousand dollars) if Respondent corrects the violations by April 19, 2010, either by removing all improperly placed crushed stone and dirt from the property, restoring the original grade and drainage of water, and stabilizing all disturbed areas with seed and straw, OR by re-grading the property pursuant to a valid County permit and following all legal requirements.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty AND any expenses incurred by Baltimore County, as authorized above, shall be imposed and placed as a lien upon the property.

IT IS FURTHER ORDERED that the County inspect the property to determine whether the violations have been corrected.

ORDERED this 25th day of January 2010.

Signed: ORIGINAL SIGNED
Margaret Z. Ferguson
Baltimore County Hearing Officer

NOTICE TO RESPONDENT: The Respondent is advised that (1) pursuant to §3-6-206(g)(2) of the Baltimore County Code, the Respondent may make written application to the Director of the Department of Environmental Protection and Resource Management within 10 days to modify or amend this order and (2) pursuant to §3-6-301(a), Baltimore County Code, the Respondent may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$150 and the posting of security to satisfy the penalty assessed.

